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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 JOHN E. BARNHOUSE,

10 Plaintiff,

11 v.

12 ERIC YOUNG, *et al.*,

13 Defendant.

Case No. 08-5553 RJB/KLS

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

14 This civil rights action has been referred to United States Magistrate Judge Karen L.  
15 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is  
16 Plaintiff's motion for appointment of counsel. Dkt. # 18. Having carefully reviewed Plaintiff's  
17 motion, Defendants' response (Dkt. # 21), and balance of the record, the Court finds, for the reasons  
18 stated below, that Plaintiff's motion should be denied.

19 **I. DISCUSSION**

20 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.  
21 Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding  
22 *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v. Escalderon*,  
23 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984);  
24 *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires  
25 an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to  
26 articulate his claims *pro se* in light of the complexity of the legal issues involved. *Wilborn*, 789  
27 F.2d at 1331. Neither of these factors is dispositive and both must be viewed together before

1 reaching a decision on request of counsel under Section 1915(d). *Id.*

2 Plaintiff argues that he requires appointment of counsel because he is unable to afford  
3 counsel, his imprisonment will limit his ability to litigate the issues, the matter is complex and will  
4 require research and investigation, the trial will likely involve conflicting testimony, and he has  
5 attempted to obtain a lawyer with no results. Dkt. #18, p. 1. However, Plaintiff has demonstrated an  
6 adequate ability to articulate his claims *pro se* and has not demonstrated that the issues involved in  
7 this case are complex. The claims in this case are not factually complex as they arise out of one  
8 issue regarding the alleged use of force by prison officials. Plaintiff's continued incarceration and  
9 lack of legal training also do not constitute exceptional circumstances warranting appointment of  
10 counsel. While Plaintiff may not have vast resources or legal training, he meets the threshold for a  
11 pro se litigant. Concerns regarding investigation and discovery, an absence of legal training and  
12 limited access to legal materials are not exceptional factors, but are the type of difficulties  
13 encountered by many pro se litigants. There are also numerous avenues of discovery available to  
14 the parties through the Federal Rules of Civil Procedure during the litigation process.  
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17 Plaintiff has also not shown a likelihood of success on the merits. *See, e.g., Wilborn*, 789  
18 F.2d at 1331. Accordingly, Plaintiff's motion to appoint counsel (Dkt. # 18) is **DENIED**. The  
19 Clerk is directed to send copies of this Order to Plaintiff and counsel for Defendants.  
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22 DATED this 13th day of January, 2009.

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25 Karen L. Strombom  
26 United States Magistrate Judge  
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